

REMARKS

I. Status of Claims

Claims 30, 32-39, 42-59, and 61-67 are presently pending. No claims have been amended by this response.

Applicants acknowledge and thank the Examiner for indicating that claim 51 would be allowable if rewritten in independent form. *Office Action*, p. 4. However, because Applicants believe all the claims are patentable, Applicants will not amend claim 51 at this time.

II. Rejection Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 30, 32-39, 42-50, 52-59 and 61-67 as unpatentable over WO 93/23009 to Kumar et al. ("*Kumar*") for the reasons disclosed on pages 2-3 of the Office Action. Applicants respectfully disagree with this rejection for at least the reasons discussed below.

The Examiner alleges that *Kumar* teaches cosmetic compositions, such as aerosol sprays and pump sprays, comprising the claimed at least one grafted silicone. See *Office Action*, pp. 2-3. The Examiner notes that *Kumar* teaches that its grafted silicone can be used with conventional polymers such as anionic, cationic, or amphoteric polymers and solvents to disperse the silicone. *Id.* at 3. The Examiner admits, however, that *Kumar* fails to teach the claimed "at least one aqueous dispersion of insoluble particles of at least one cationic polymer." *Id.* Despite this failing, the Examiner summarily concludes:

[I]t would have been obvious for one of an [sic] ordinary skill in the art at the time of the instant invention to use a

combination of polysiloxane polymers in combination [sic] polymers such as cationic, anionic etc polymers and further, depending on the polymer used, choose a solvent such that a dispersion or a solution containing [sic] silicone polymer is prepared

Id., at 3. Applicants submit that the Examiner has failed to provide a compelling reason why one skilled in the art would have found the claimed invention obvious from Kumar's disclosure.

The motivation to modify a reference may derive from three sources - (1) the nature of the problem solved; (2) the teachings of the prior art; and (3) the knowledge of persons of ordinary skill in the art. M.P.E.P. § 2143.01. The Examiner, however, has not shown that any of these sources provided the necessary evidence needed to make the claimed invention.

Specifically, with respect to the first point, the present inventors sought to create compositions with improved cosmetic properties, such as improved fixing power, as required by the present claims. *Specification*, page 1, line 12- page 2, line 9. The inventors specifically noted that *Kumar's* compositions and other compositions with aqueous dispersions of insoluble polymer particles did not meet these needs. *Id.* Thus, the inventors solved this problem by combining "at least one grafted silicone" and "at least one aqueous dispersion of insoluble particles of at least one cationic polymer." Page 2, lines 10-15.

Kumar, however, never mentions that the fixing power of its compositions could have been improved by incorporating any polymer let alone the presently claimed "at least one aqueous dispersion of insoluble particles of at least one cationic polymer." In fact, *Kumar* teaches that its compositions already provide styling hold benefits. *Kumar*, page 42, lines 34-37. Thus, there is no reason why one skilled in the art reading *Kumar*

would have even thought to modify this reference to improve its fixing power: *Kumar* teaches that its invention already possesses this benefit. Thus, not only does *Kumar* fail to address the nature of the problem the present inventors sought to solve, it fails to recognize there was any problem at all.

With regard to point (2), *Kumar* provides no teaching that would have led one to modify this reference. *Kumar* generically discloses that its compositions can comprise any cationic, anionic, or amphoteric, or even polysiloxane, polymer. Given the numerous types and formulations of these polymers, why would one skilled in the art arbitrarily select cationic polymers? And then, after deciding to use cationic polymers, choose to use an aqueous dispersion of insoluble particles of at least one cationic polymer. Nothing in *Kumar* would have provided any suggestion to make this modification. Indeed, because *Kumar* primarily touts the benefits of its silicone, *Kumar* suggests doing otherwise. *Kumar*, page 8, lines 6-10 (stating that its silicone polymer “provide[s] excellent brilliance, gloss, conditioning, and style retention properties without a stiff, and sticky feel”).

Moreover, *Kumar* describes the anionic, nonionic, cationic, and amphoteric polymers as optional ingredients. Indeed, *Kumar* states that “the copolymers in accordance with the present invention are used in these hair care products as a *partial or total substitute for* or in combination with anionic, nonionic, cationic, and amphoteric polymers, and polysiloxane polymers conventionally used in these hair care products.” *Kumar*, page 42, lines 21-26 (emphasis added). This passage clearly suggests that *Kumar*’s compositions do not even need these optional polymers as its claimed grafted silicone copolymers possess all the necessary cosmetic properties.

Finally, with regard to point (3), both the prior art and the present specification provide evidence of the knowledge of those of skill in the art. The present specification, for instance, discloses that compositions containing aqueous dispersions of insoluble polymer particles may not sufficiently fix the hair or provide satisfactory cosmetic properties. *Present Specification*, page 1, lines 14-20. Kumar, moreover, is completely silent as to whether aqueous dispersions of insoluble particles of cationic polymer would improve hair properties when combined with at least one grafted silicone polymer. These references demonstrate that at the time of the present invention, one skilled in the art would not have sought to formulate compositions comprising the presently claimed grafted silicone and at least one aqueous dispersion of insoluble particles of at least one cationic polymer. Indeed, there was no evidence that such a composition could effectively fix the hair. It appears that the Examiner has merely relied on the present disclosure to find such evidence. However, a motivation or a suggestion to modify a reference must derive from the prior art and not the applicant's disclosure. M.P.E.P. § 2131.

III. **Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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